IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. 77-401

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 922, ET AL., *Petitioners*,

v.

STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY, *Respondent*.

To the Appellate Division of the Supreme Court of the State of New York Second Judicial Department

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PETITION FOR A WRIT OF CERTIORARI

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The petitioners [1] respectfully pray that a writ of certiorari issue to review the judgment of the Appellate

[1] Petitioners, who were defendants in the trial court, respondents in the first appeal and appellants in the appeal after remand and trial to the Appellate Division of the Supreme Court, are the International Brotherhood of Electrical Workers, Local 922, the International Brotherhood of Boilermakers and Blacksmiths, the Brotherhood Railway Carmen of the United States and Canada, the International Brotherhood of Firemen and Oilers, all labor

Division of the Supreme Court of the State of New York, Second Judicial Department, entered in this case on April 25, 1977.

OPINIONS BELOW

The opinion of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department is reported at 393 N.Y.S. 2d 773 (1977), and reprinted as Appendix B annexed hereto (*infra,* p. 2a). The opinion of the Supreme Court of the State of New York, Kings County, dated February 28, 1977 is not officially reported but is reported unofficially at 95 LRRM 2138 (1977), and reprinted as Appendix C attached hereto (*infra,* p. 8a). The opinion of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department dated February 8, 1977 is reported at 390 N.Y.S.2d 1021 (1977) and reprinted as Appendix D attached hereto (*infra,* p. 23a). The opinion of the United States District Court for the Eastern District of New York, and the opinion of the Supreme Court of New York, Kings County, dated January 28, 1977, are unreported but appear as Appendices E and F respectively to this petition (*infra,* p. 24a, 27a).

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organizations, Russell Homiak, George McGowan, Robert McGowan, Ivan Hadzinikolov, Haywood Kelly, Clarence Rivers, and Louis J. Errichiello, all individuals and officers of the aforementioned labor organizations, the Railway Employes' Department, a department of the AFL-CIO with which the aforementioned labor organizations are affiliated, System Federation No. 1, an affiliate of the Railway Employes' Department, and John Doe and Richard Roe, being fictitious names representative of all individuals employed in the operation and maintenance of the transit facilities operated by the Staten Island Rapid Transit Operating Authority.

JURISDICTION

The judgment of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department was entered on April 25, 1977 (Appendix B; *infra,* p. 2a). A timely motion for permission to appeal was denied by the Court of Appeals of the State of New York on June 16, 1977 (Appendix A; *infra,* p. 1a). This petition for certiorari was filed within 90 days thereafter.[2] The jurisdiction of this Court rests on 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Does a state court violate the Supremacy Clause of the United States Constitution by enjoining employees of a state-owned railroad, which is a carrier subject to the Railway Labor Act, from engaging in a peaceful strike following exhaustion of the mandatory procedures set forth in the Act for the resolution of major disputes?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Constitution of the United States, of the Railway Labor Act (44 Stat. 577, as amended, 45 U.S.C. § 151, *et seq.*) and of the New York Statutes (Civil Service Law § 200 *et seq.*, Public Authorities Law § 1266 (subd. 5)) are set out in Appendix G (*infra,* pp. 30a-42a).

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[2] The petition is timely. Cf. *American Railway Express Co.* v. *Levee,* 263 U. S. 19, 20-21 (1923); *Interstate Circuit, Inc.* v. *Dallas,* 390 U. S. 676, 678 n. 1 (1968).

STATEMENT OF THE CASE

The Staten Island Rapid Transit Operating Authority ("SIRTOA") is a state-owned commuter railroad which operates on tracks which are part of the nation's interstate rail system. SIRTOA operates pursuant to an Interstate Commerce Commission certificate of convenience and necessity and is a "carrier" subject to the Railway Labor Act.[2] Petitioners represent all of SIRTOA's shopcraft employees for purposes of collective bargaining and were parties to a labor agreement with SIRTOA that expired on December 31, 1974.

Pursuant to Section 6 of the Railway Labor Act, petitioners timely served notices upon SIRTOA that they desired to negotiate changes in the agreement affecting rates of pay, rules and working conditions. The parties were unable to agree upon such changes or to resolve their differences in conference and the dispute was submitted to mediation by the National Mediation Board pursuant to Section 5 of the Railway Labor Act. 45 U.S.C. § 155. On December 15, 1976, the National Mediation Board notified the parties that its mediatory efforts had failed and terminated its services. During the thirty days thereafter there was no agreement to arbitrate made by the parties, although the union expressed its willingness to accept binding

[2] The National Mediation Board, pursuant to the exclusive power vested in it by Section 2, Fourth and Ninth of the Railway Labor Act, 45 U.S.C. § 152, Fourth and Ninth, has determined SIRTOA to be a "carrier" subject to the Railway Labor Act. (Defendants' Exhibits D and E) (Exhibit references are to Exhibits introduced during the trial in the Supreme Court of the State of New York, Kings County; "R." references are to the pages of the transcript of that proceeding).

arbitration; nor was a presidential emergency board created pursuant to Section 10 of the Act (45 U.S.C. § 160). Petitioners continued to engage in collective bargaining with SIRTOA until 3:30 a.m. on January 17, 1977. No agreement was negotiated and at 6:00 a.m. on January 17, 1977 the employees represented by petitioners commenced a strike.

SIRTOA sought to end this concerted activity through legal action. It commenced an action on January 17, 1977 in the Supreme Court of the State of New York, Kings County, seeking to enjoin the strike under the provisions of Section 210 of the Civil Service Law of New York and the common law of the State of New York. Pending the determination of the action, SIRTOA sought and obtained on January 17 a temporary restraining order forbidding the strike. On January 28, 1977, the New York Supreme Court, by Justice Irwin Brownstein, refused to issue a preliminary injunction and vacated the temporary restraining order.

Thereafter, petitioners removed the case to the United States District Court for the Eastern District of New York, but that Court, on February 4, 1977, remanded the action to the state court.

SIRTOA had filed a Notice of Appeal to the Appellate Division of the N. Y. Supreme Court on January 28, 1977, shortly after the case had been removed to federal court. At that time the Appellate Division issued an Order to Show Cause containing a further restraining order and setting the appeal for argument on February 1, 1977. Upon removal of the case, the Court canceled the Order to Show Cause. Following the remand to the state court, the Appellate Division

reinstituted the Order to Show Cause and heard argument on the case on February 8, 1977. On argument before the Appellate Division, the justices suggested that there was a paucity of evidence in the underlying record and reversed and remanded the case in the Court's discretion to the N. Y. Supreme Court, Kings County for an immediate trial so that the parties could develop a more complete record for review. In so doing, this Court did not pass upon the merits of N. Y. Supreme Court Justice Brownstein's decision.

On February 15 and 16, 1977, a trial was conducted in the Supreme Court, Kings County (Trial Term Part VIII) before the Honorable Thomas R. Jones. On February 28, 1977, Justice Jones issued his decision and a judgment was entered granting an injunction against defendants "from engaging in, causing, instigating, encouraging or lending support or assistance to any strike, work stoppage or slowdown in the operation of the Staten Island Rapid Transit Operating Authority railroad." That same day, petitioners filed a Notice of Appeal with the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department. On March 4, 1977, the Appellate Division granted petitioners' motion for an accelerated appeal and directed that the appeal be heard on the original record and with typewritten briefs. Following argument on April 25, 1977, the Appellate Division entered an opinion and order affirming the judgment of the New York Supreme Court.

Petitioners timely filed a Motion for Permission to Appeal the judgment of the Appellate Division with the Court of Appeals of the State of New York. This motion was denied on June 16, 1977.

From the outset and at all subsequent stages of the litigation, petitioners raised in timely and proper fashion the federal question presented here. In a memorandum of law and in oral argument in opposition to SIRTOA's motion for a preliminary injunction in the Supreme Court of the State of New York, Kings County, petitioners challenged state jurisdiction over the activity complained of as in conflict with the Railway Labor Act and therefore with the Constitution of the United States. By specific pleading in their petition for removal and answer and counterclaim in the United States District Court for the Eastern District of New York, by their brief and oral argument before the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department on SIRTOA's appeal from the judgment of the Supreme Court of the State of New York denying SIRTOA's motion for a preliminary injunction, by affirmative defense in answer to the Complaint timely filed and by motion to dismiss in the Supreme Court of the State of New York, King's County, and then by express assignment of error in the appeal to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, from the judgment and order of the Supreme Court of the State of New York, Kings County, enjoining petitioners from striking, and by express assignment of error in the motion for permission to appeal to the Court of Appeals of the State of New York, petitioners renewed their preemption contentions.

Justice Brownstein of the Supreme Court of the State of New York, Kings County, concluded that jurisdiction did not exist in the state courts to enjoin the petitioners from striking because "the right to

strike guaranteed by the Railway Labor Act supersedes the provisions of the Taylor Law [the New York State Civil Service Law] as to these employees." The United States District Court, in remanding the case to the state courts, held that had SIRTOA commenced the action in federal court to enjoin the strike under the Railway Labor Act, the injunction would be denied, but because the matter was before the court upon removal, and "[i]n view of the fact that there is a complex of fina[ncia]l arrangements and public employee statutes which require interpretation and which involve complex administrative operations of the City and State, the Federal Court should abstain from deciding these State and local issues if it is at all possible to do so."

On discretionary remand from the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department for a full trial, Justice Jones of the Supreme Court of the State of New York, Kings County, enunciated the issue for trial to be "Whether the [Petitioners'] members have the right to strike against SIRTOA, a public benefit corporation, under the provisions of the Railway Labor Act (45 U.S.C. Section 151, et seq.), notwithstanding that the New York State Public Employees' Fair Employment Act, Civil Service Law, Section 200 et seq., known as the 'Taylor Law,' prohibits strikes by public employees." Following trial, Justice Jones determined that the Railway Labor Act does not preempt the laws of New York State under which "the City of New York has the plenary right and responsibility to protect its economy from being disrupted to the point of disaster by a strike of its public employees." The Appellate Division of the Supreme Court of the State

of New York, Second Judicial Department, affirmed, holding that "SIRTOA's employees may be enjoined from striking pursuant to the Taylor Law notwithstanding that the Railway Labor Act has been judicially interpreted to permit peaceful primary strikes."

The court below did not hold that the Railway Labor Act was totally inapplicable or "that SIRTOA's employees are subject to the full panoply of provisions contained in [the Taylor Law]." Rather, it held that only the no-strike provisions of the State civil service law were applicable.

REASONS FOR GRANTING THE WRIT

I. The Court Below Has Decided a Substantial and Important Federal Question Contrary to Applicable Decisions of the Court

When faced with the question of what law governs the legality of peaceful, orderly concerted labor conduct engaged in by striking railroad employees and their unions in a major dispute arising under the Railway Labor Act, 45 U.S.C. § 151 et seq.—state or federal—the Court below held that state law governed. This holding is in direct conflict with Article VI, Sec. 2 of the U.S. Constitution and with federal labor policy, as well as with the decisions of this Court.

The question of federal preemption, urged by petitioners from the start is determinative of the validity of the judgment below. If the preemption claim is correct, then the strike engaged in by petitioners "must be deemed conduct protected against state proscription."[4]

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[4] *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 393 (1969).

The question comes down to whether Congress, by not itself outlawing the kind of peaceful economic weapon used here following the exhaustion of the "purposely long and drawn out"[5] procedures for resolving major disputes under the Railway Labor Act, nevertheless left the states free to do so.

The decision of the Court below that Congress did leave this area open to state regulation conflicts directly with this Court's decision in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969), as applicable to State-owned railroads through the holding of this Court in *California* v. *Taylor*, 353 U.S. 553 (1957).

Jacksonville Terminal determined that the states were without power to regulate the economic combat of parties subject to the Railway Labor Act, absent violence. There, following the exhaustion of all procedures required by the Act for resolving major disputes, the unions called a strike and peacefully picketed all locations at which the employing carrier operated, including the Jacksonville Terminal. Finding that the picketing " 'would result in a virtual cessation of activities . . . of the Terminal Company,' and would cause serious damage to the entire State" (394 U.S. at 374), the Florida Court enjoined the picketing as illegal under State law. This Court reversed:

> We think it clear . . . that the exercise of plenary state authority to curtail or entirely prohibit self-help would frustrate effective implementation of the Act's processes. The disputants' positions in the course of negotiation and mediation, and their willingness to submit to binding arbitration or abide by the recommendations of a presidential commission, would be seriously affected by the knowledge that after these procedures were exhausted a State would, say, prohibit the employees from striking or prevent the railroad from taking measures necessary to continue operating in the face of a strike. 394 U.S. at 380-381.

[5] *Brotherhood of Ry. & S. S. Clerks* v. *Florida East Coast Ry.*, 384 U.S. 238, 246 (1966)

Finding the right to strike to be "integral to the Act" (394 U.S. at 385), this Court ruled that "State courts may not enjoin a peaceful strike by covered railway employees, no matter how economically harmful the consequences may be." *Ibid.* "Peaceful primary strikes and picketing incident thereto," the Court decided, "lie within the core of protected self-help under the Railway Labor Act." 394 U.S. at 386.

California v. *Taylor* concerned the application of the Railway Labor Act to state-owned railroads. The case stands for the principle that the Railway Labor Act applies to all railroads engaged in interstate operation, regardless of their ownership. "Congress no doubt concluded that a uniform method of dealing with labor problems of the railroad industry would tend to eliminate inequities, and would promote a desirable mobility within the railroad labor force." 353 U.S. at 567.[6]

Jacksonville Terminal and *Taylor* taken together exclude the states from regulating the peaceful economic weapons utilized by the employees of their railroads following exhaustion of major dispute reso-

[6] This Court expressly reaffirmed *California* v. *Taylor* in *National League of Cities* v. *Usery*, 426 U.S. 833, 854 n. 18 (1976).

lution procedures contained in the Railway Labor Act. The Court below however held that petitioners may be enjoined from striking pursuant to state law, *Jacksonville Terminal* and *Taylor* notwithstanding.

Despite a finding that SIRTOA does fall within the coverage of the Railway Labor Act, and that its labor relations have always been conducted pursuant to that Act, the Appellate Division enjoined petitioners from striking because it found SIRTOA not to be "a *vital link* in the national transportation system, the continued operation of which is important to the national flow of commerce" (Emphasis added) (*infra,* p. 6a). In so doing, the Court below held the State's interest "in preventing strikes by public employees and ensuring the continuation of commuter rail services" for the residents of Staten Island to supersede the federal interests embodied in the Railway Labor Act. (*Infra,* pp. 6a-7a.) By so ruling, the Appellate Division denied to petitioners a weapon that, as this Court has recognized, Congress meant for them to have available, Cf. *Machinists* v. *Wisconsin Emp. Rel. Comm'n.,* 427 U.S. 132 (1976); *Bus Employees* v. *Wisconsin Emp. Rel. Bd.,* 340 U.S. 383 (1950).

II. The Importance of Reviewing the Conflict.

The Court below has sustained the validity of the no-strike provisions of the New York State Civil Service Law [7] as against a claim of repugnance to the

[7] The state law provides a comprehensive means for governing the relationships between government and its employees in New York. It was intended to establish "fair conditions for organization and collective negotiating by public employees" while also "protect[ing] the public against interruption or impairment of

Supremacy Clause of the U. S. Constitution. Petitioners respectfully suggest that this decision is clearly wrong. The federal interest in the operations and labor relations of rail carriers is all-encompassing. The extent of federal regulation in the area of railroad employee relations alone is sweeping:

1. The Railway Labor Act, 45 U.S.C. 151 *et seq.*
2. The Railroad Retirement Act, 45 U.S.C. 228 *et seq.*
3. The Federal Employers Liability Act, 45 U.S.C. 51 *et seq.*
4. The Railroad Unemployment Insurance Act, 45 U.S.C. 351 *et seq.*
5. The Safety Appliance Act, 45 U.S.C. 1 *et seq.*
6. The Boiler Inspection Act, 45 U.S.C. 22 *et seq.*
7. The Hours of Service Act, 45 U.S.C. 61 *et seq.*

This federal regulation pervades the operation of SIRTOA—it is subject to all of these federal statutes. (*Infra,* p. 4a; R. 19-20, 74-78, Defendants' Exhibits C, F-I).[8] This demonstrated federal interest notwithstanding, the Court below found state law controlling.

essential governmental services." 1967 McKinney's Session Laws 1527. The Court below held that petitioners as public employees, are subject to the no-strike provisions of the state law but not "to to full panoply of provisions" in the law (*Infra,* p. 6a).

[8] SIRTOA's employees are not eligible for benefits under New York State laws concerning disability, workmen's compensation, on the job injury, unemployment, and retirement (R. 76). The New York State Public Employment Relations Board, the state agency created to administer the state law upon which the Court below based its injunction against petitioner, on the other hand, specifically declined to assert jurisdiction over a SIRTOA employee's application to change his collective bargaining representa-

The conflict between federal and state law could not be clearer. The federal statute allows the right to strike. The state statute forbids it. The striking anomaly in the decision here is in its application of federal law up to a point. The Court below does not hold that the federal law is wholly inapplicable or that the state law applies in full.[9] Rather it concocts a mixture. It holds that while petitioners may resort to self-help under federal law, state law removes the right to strike from the scope of that self-help. (*Infra*, p. 5a.) This type of analysis "bear[s] the seeds of a substantial impediment to the efficient working of our federalism." *Parden* v. *Terminal R. of Alabama Docks Department*, 377 U.S. 184, 197 (1964).

Under the federal system, state courts are not to be free to pick and choose which portions of federal law to apply depending on their view of the equities of the dispute before them. But that is exactly what the Court below has done. It has recognized the relationship of the Railway Labor Act to the dispute but because in its view the problems raised by the dispute are not of sufficient magnitude to the national flow of commerce, it has declined to allow free operation of federal law. This judgment represents a serious breach of the judicial function.

This Court should grant the petition for a writ of certiorari to review and correct the erroneous decision rendered below.

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tive on the grounds that SIRTOA employees are not subject to the state civil service law and that the matter was governed exclusively by the Railway Labor Act (R. 50; Defendants' Exhibit M).

[9] "We do not today hold that SIRTOA's employees are subject to the full panoply of provisions contained in the State's scheme of public employment labor relations." (*Infra*, p. 6a).

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted and on further hearing on the merits the decision of the Appellate Division of the Supreme Court of the State of New York should be reversed and the case remanded with instructions to vacate the permanent injunction.

Respectfully submitted,

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APPENDIX

APPENDIX A

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the sixteenth day of June A. D. 1977

PRESENT, HON. CHARLES D. BREITEL,
Chief Judge, presiding.

Mo. No. 600

STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY, *Respondent*,

vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 922, et al., *Appellants*.

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellants herein and papers having been submitted thereon and due deliberation thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with twenty dollars costs and necessary reproduction disbursements.

/s/ JOSEPH W. BELLACOSA
Joseph W. Bellacosa
Clerk of the Court

APPENDIX B

At a Term of the Appellate Division of the
Supreme Court of the State of New York,
Second Judicial Department, held in Kings County
on April 25, 1977.

HON. FRANK A. GULOTTA, Presiding Justice, HON. JAMES D. HOPKINS, HON. M. HENRY MARTUSCELLO, HON. HENRY J. LATHAM, HON. JOHN P. COHALAN, *Associate Justices.*

Order on Appeal from Judgment
Civil Action or Proceeding

STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY, *Respondent,*

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 922, et al., *Appellants.*

In the above entitled cause, the above named International Brotherhood of Electrical Workers, Local 922, et al., defendants, having appealed to this court from a judgment of the Supreme Court, Kings County, dated February 28, 1977, which, after a nonjury trial, enjoined them from engaging in, causing, instigating, encouraging, or lending support or assistance to any strike, work stoppage or slowdown in the operation of plaintiff's railroad; and the said appeal having been argued by Michael S. Wolly, Esq., of counsel for the appellants, and argued by Harold Tompkins, Esq., of counsel for the respondent, and due deliberation having been had thereon; and upon this court's opinion and decision slip heretofore filed and made a part hereof, it is:

ORDERED that the judgment appealed from is hereby unanimously affirmed, without costs or disbursements.

/s/ IRVING N. SELKIN
Clerk of the Appellate Division

Staten Island Rapid Transit Operating Authority, respondent, v. International Brotherhood of Electrical Workers, Local 922, et al., appellants.

Edward J. Hickey, Jr., William J. Hickey and Michael S. Wolly, Washington, D.C. and David J. Fleming and Paul G. Reilly, Jr., New York, N.Y. (Mullholland, Hickey & Lyman, Washington, D.C. and Reilly, Fleming & Reilly, New York, N.Y. of counsel), for appellants.

Louis J. Lefkowitz, Attorney-General, New York, N.Y. and Alphonse E. D'Ambrose, Brooklyn, N.Y. (Harold Tompkins and James P. McMahon of counsel), for respondent.

Appeal by defendants from a judgment of the Supreme Court, Kings County, dated February 28, 1977, which, after a nonjury trial, enjoined them from engaging in, causing, instigating, encouraging, or lending support or assistance to any strike, work stoppage or slowdown in the operation of plaintiff's railroad.

Judgment affirmed, without costs or disbursements.

Plaintiff, the Staten Island Rapid Transit Operating Authority (SIRTOA), is a public benefit corporation established pursuant to section 1266 (subd. 5) of the Public Authorities Law, and is a subsidiary of the Metropolitan Transportation Authority, charged with the operation of Staten Island's only commuter rail line. SIRTOA is also a "public employer", as defined by the New York State "Taylor Law" (see Civil Service Law, §§ 200 *et seq.* [Public Employee's Fair Employment Act]). Hence, it is claimed that its employees are legally barred from striking (see Civil Service Law, § 210). (SIRTOA is also a "covered organization" within the meaning of the New York State Financial Emergency Act for the City of New York [L 1975, ch. 868], so that its employees are allegedly subject to the wage freeze provisions of that act.)

The railroad operated by SIRTOA is a single-line commuter railway operated between Tottenville and the St. George Ferry Terminal in Staten Island. Prior to its acquisition by the City of New York and its subsequent turnover to SIRTOA in 1970, via a lease and operating agreement between the city and SIRTOA, the railroad was owned and operated by a private company which was part of the B&O Railroad system. At one time the B&O system operated a ferry between Tottenville and Perth Amboy, New Jersey, so that the Staten Island railway line was truly a part of an interstate system. At the time of the city's acquisition, the connection between the railway and interstate commerce had dwindled to the operation of one freight train per day over this trackage. Continuation of this service was a condition of the city's takeover. This minimal freight service is today handled by B&O personnel and equipment and has been declining to the point where there is only one regular customer on Staten Island, which is serviced by a seven-car train making one run per day, five days per week.

Since the railroad had originally been part of the B&O system, its employees had traditionally been dealt with by management pursuant to the Railway Labor Act (U.S. Code, tit. 45, §§ 151 et seq.). When the city acquired the line, it adopted existing collective bargaining agreements and the employees and SIRTOA have continued to negotiate pursuant to the Railway Labor Act. The employees still participate in the Federal Railroad Retirement System and Unemployment Insurance Act and are covered by the Federal Employer's Liability Act. In addition, SIRTOA operates pursuant to an Interstate Commerce Commission certificate of public convenience and necessity, although it is exempt from many other ICC requirements, and its day-to-day operations are subject to inspection by the Federal Railroad Administration.

The instant labor dispute between the parties, which concerns wages, work rules and conditions, has been going on

for over two and one-half years. The matter was before the National Mediation Board until December 15, 1976, when the board gave notice that its services had terminated. Arbitration having been rejected, the parties have now fully exhausted the procedures of the Railway Labor Act. Negotiations did, however, continue until January 17, 1977 when, no agreement having been reached, the defendant unions called a strike. A temporary restraining order was issued shortly thereafter. That order was later vacated, and SIRTOA's motion for a preliminary injunction denied by Special Term, but this court granted a stay pending appeal. The appeal was, however, delayed by defendants' removal of the proceeding to a Federal court, which court then remanded it to the State courts on SIRTOA's motion. Thereafter, this court vacated Special Term's order and remanded for an immediate trial so that the parties could develop a more complete record for our review. The stay was continued.

We are now presented with an appeal from a judgment, made after trial, enjoining the strike. The single question before us is whether SIRTOA's employees may be enjoined from striking pursuant to the Taylor Law notwithstanding that the Railway Labor Act has been judicially interpreted to permit peaceful primary strikes (see *Brotherhood of R.R. Trainmen* v. *Jacksonville Term. Co.*, 394 US 369). We believe that they may be so enjoined.

There is no doubt that when a state or one of its political subdivisions owns and operates a railroad which is directly engaged in interstate commerce, it thereby subjects itself to the commerce power and that Congress can regulate its employment relationships (*California* v. *Taylor*, 353 US 553). The operation of a railroad in interstate commerce is not an integral part of state governmental activities which are protected from congressional impairment by principles of state sovereignty (*National League of Cities* v. *Usery*, 426 US 833, 854, n. 18). Nor may it be denied that SIRTOA comes, at least literally, within the coverage of the Railway

Labor Act, as it does operate pursuant to an ICC certificate, and its employees have a strong history of bargaining under that act. (It would appear that SIRTOA has never challenged the status of its employees under the Railway Labor Act, but rather has simply continued the *status quo*.)

However, it is equally undeniable that SIRTOA is essentially an intrastate passenger or commuter operation, fully akin to the city's rapid transit system. Thus, for example, the SIRTOA fare is the same as the 50¢ fare charged on the city's rapid transit facilities, and the city is equally committed to making up SIRTOA's resulting operating deficit. SIRTOA's operation is in no way comparable to the State-owned switching or terminal railroads held subject to Federal jurisdiction in *California* v. *Taylor* (*supra*), *International Longshoremen's Assn.* v. *North Carolina Ports Auth.* (370 F Supp 33, affd. 511 F2d 1007 [CCA 4th]) and *Parden* v. *Terminal Ry. of Alabama State Docks Dept.* (377 US 184 [Federal Employers' Liability Act]). The connection between SIRTOA and interstate commerce is extremely tenuous, a fact recognized by the Interstate Commerce Commission, so much so that SIRTOA has been exempted from various provisions of the Interstate Commerce Act. It is not a vital link in the national transportation system, the continued operation of which is important to the national flow of commerce; and the instant labor dispute does not present problems of national or even regional magnitude, which problems would require uniform treatment on a national scale. (Although our determination herein in no way relies thereon, it is of some interest to note that a prior lengthy strike against SIRTOA involving different unions did not extend to the daily freight run.)

We do not today hold that SIRTOA's employees are subject to the full panoply of provisions contained in the State's scheme of public employment labor relations. (It might be noted that the State scheme is very similar to that embodied in the Railway Labor Act, while in *California* v. *Taylor* [*supra*], for example, the State scheme was the very antithesis of Federal policy, not even recognizing the right of public employees to bargain collectively.) Rather, we merely hold that balancing SIRTOA's minimal and tenuous connection to interstate commerce, exemplified by one freight run per day for the convenience of one customer, against the State's direct and compelling interest in preventing strikes by public employees and ensuring the continuation of commuter rail service for thousands of Staten Island residents, it is clear that these public employees may properly be enjoined, under the Taylor Law, from striking against SIRTOA as a means of "self help" in their continuing dispute.

Defendants' reliance upon *Amalgamated Assn. of St., Elec. Ry. & Motor Coach Employees of Amer.* v. *Wisconsin Employment Relations Bd.* (340 US 383) is misplaced in our view. That case, and *Division 1287, Amalgamated Assn. of St., Elec. Ry. & Motor Coach Employees of Amer.* v. *Missouri* (374 US 74), involved pre-emption of state anti-strike laws by the National Labor Relations Act, which is different in many respects from the Railway Labor Act. Moreover, the employees involved were not public employees; and the NLRA specifically excludes such employees from its coverage.

GULOTTA, P.J., HOPKINS, MARTUSCELLO, LATHAM and COHALAN, JJ., concur.

APPENDIX C

Memorandum

SUPREME COURT,
KING'S COUNTY
(TRIAL TERM PART VIII)

Dated February 28, 1977

Ind. #878/77

STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY

vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 922, et al.

On February 8, 1977, the Appellate Division, Second Department, reinstated a temporary restraining order of Special Term, which enjoined 250 employees of Staten Island Rapid Transit Operating Authority (SIRTOA), from striking, and remanded the action to the Supreme Court for an immediate trial of the issue; *viz:*

> Whether the Respondent's members have the right to strike against SIRTOA, a public benefit corporation, under the provisions of the Railway Labor Act, (45 USC Section 151, *et seq*), notwithstanding that the New York State Public Employees' Fair Employment Act, Civil Service Law, Section 200 *et seq*, known as the "Taylor Law," prohibits strikes by public employees.

The defendants contend that the Railway Labor Act supersedes the Taylor Law, if that law applies to their union members. The plaintiffs assert that the Railway Labor Act cannot be constitutionally construed to prevent New York State from maintaining essential state services by prohibiting strikes of its public employees under the Taylor Law. The Court has heard the testimony of witnes-

ses and evaluated documents presented by both sides. The legal briefs and arguments of counsel have been considered. On the basis of the findings of fact and subsequent conclusions of law, spelled out *seriatim* below, the Court determines that:

1) Defendants' members are public employees governed by the Taylor Law who may not strike to work their will in wage negotiations with the plaintiff.

2) The Railway Labor Act does not pre-empt the Taylor Law in regard to the latter's prohibition against strikes by public employees engaged in intra-state commerce.

3) Plaintiff is a "covered organization," as that term is defined in the New York State Financial Emergency Act for the City of New York, and as such, is subject to the "Wage freeze" and financial limits imposed by that law, (Chapter 868, 1975, Laws of New York, Section 2 and 10). Plaintiff may not grant nor may defendants' members receive any wage increases as a result of strike action or otherwise, except in accordance with the financial plan for the City and covered organizations with respect to fiscal years ending June 30, 1976, 1977, and 1978. (Section 8)[1]

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[1] The New York City Financial Emergency Act was passed by the New York State Legislature because "The City (was) unable to obtain funds needed . . . to provide essential services (i.e., provide subsidies for vital facilities, like rapid transit, etc.) to its inhabitants . . ." without which the City must ". . . fail to pay salaries and wages to its employees." The Legislature found that, "If such failures (to pay its debts) were to occur, the effect on . . . the City and its inhabitants would be devastating . . ."; that "this situation is a disaster and creates a state of emergency." The Act defined a "covered organization" as ". . . any governmental agency . . . including . . . the Staten Island Rapid Transit Operating Authority . . ." The Act froze all wages of public employees at levels in effect since June 30, 1975. It prohibited officers of

The facts found in this case are not in dispute:

I. SIRTOA is a public benefit corporation; a subsidiary of the Metropolitan Transit Authority, created under Section 1266, Subdivision 5 and administered under Section 1264, Subdivision 2 of the Public Authorities Law of New York.

Ia). The passenger railroad operated by SIRTOA is owned by the City of New York. The system was leased by the City to Plaintiff for operation on July 20, 1970. It is the only rapid transit railroad line on Staten Island.

Ib) The City of New York subsidizes 65% of SIRTOA's total operating budget as part of the Metropolitan Rapid Transit System. The City contributes $1.10 and the passenger pays $.50 for each trip. In 1975, New York City paid $4.2 million dollars to cover SIRTOA's operating deficit. In 1976, the City advanced $3.4 million from its general funds to make up the railroad's deficiencies.

Ic) SIRTOA receives some small revenue from the Baltimore and Ohio Railroad, an interstate carrier, for use of its tracks. One B & O freight train per day carries the merchandise of one customer on a regular basis, and two customers on an irregular basis.

II. SIRTOA is a Class 1 railroad carrier, engaged in the business of transporting passengers in intra-state commerce within New York City.

III. SIRTOA operates pursuant to a Certificate of Necessity, issued by the Interstate Commerce Commission. The railroad continues to be subject to the Inter-

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"covered organization" from approving any wage increases to employees without prior approval of the Board, in accordance with the financial plan developed by the Board and the City of New York.

state Commerce Act, although exempted from accounting and other provisions thereof. (CF Certificate and Order of Interstate Commerce Commission, dated April 19, 1971).

IIIa) SIRTOA's facilities are subject to inspection and regulation by the Federal Railway Administration; its employees must comply with federal regulations.

IIIb) SIRTOA's employees are subject to the Railroad Retirement Act, the Railroad Unemployment Insurance Act, and the Federal Employees' Liability Act, for disability, sickness, retirement and unemployment benefits. Defendants' members are not covered by New York State disability, unemployment, retirement or Workmen's Compensation laws.

IIIc) SIRTOA has never dealt with its employees under the "Taylor Law."

IV. The defendants are labor unions and officers of the unions which represent approximately 250 striking employees of SIRTOA.

V. The National Mediation Board, acting pursuant to the Railway Labor Act, 45 USC 155, announced on December 15, 1976, that it was unable to resolve the dispute.

VI. The parties continued to engage in collective bargaining negotiations until 3:30 a.m. on January 17, 1977 without success. A strike was called by the defendants at 6:00 a.m. on January 17, 1977 which halted all rail service on Staten Island, until a temporary restraining order was issued by the Supreme Court, effective January 18, 1977. The restraining order was reinstated by the Appellate Division, Second Department, on February 1, 1977, and remains in effect.

VII. SIRTOA trains have continued to operate, without interruption, since January 18, 1977.

VIII. During the one-day strike, one train per day of freight traffic for Baltimore & Ohio Railroad, an interstate carrier, was permitted to operate with consent of the defendants' union.

IX. The City of New York must continue to subsidize SIRTOA's fixed expenses of at least $6,000 per day when passenger service is halted.

X. An unresolved wage dispute exists between the parties, within the meaning of the Railway Labor Act, concerning wages, rules and working conditions.

This court has also found that the one-day strike by defendants caused:

a) One small local business enterprise located near a SIRTOA's station to sustain a one-third loss of gross income.

b) Forty percent of 175 senior citizens, daily passengers on SIRTOA's trains to Great Kills Community Center, to be cut off and unable to partake of lunch and recreational facilities.

c) Passenger traffic on New York City ferries to decline substantially.

d) Most of the 15,000 passengers who use SIRTOA's trains to suffer substantial economic, financial and social losses as a result of a strike of SIRTOA's employees, because alternative means of transportation are more expensive or unavailable.

CONCLUSIONS OF LAW

The Court has determined that:

1) SIRTOA is a public benefit corporation; and that defendants' members are public employees, as defined by the "Taylor Law," and Public Authorities Law, Section 1265

Subdivision 9(a), and 1266, Subdivision 2 and 5; and by the Railway Labor Act, 45 USC, Section 151, First and by the Civil Service Law, Section 201,[a] who are prohibited from striking against SIRTOA.

2) The Railway Labor Act does not pre-empt the State of New York from legislating against strikes in intra-state commerce, nor prohibits the City of New York from interdicting strikes by its public employees. Under the Taylor Law, and the common law, the City of New York has the plenary right and responsibility to protect its economy from being disrupted to the point of disaster by a strike of its public employees.

After months of unsuccessful negotiations with the Staten Island Rapid Transit Operating Authority (SIRTOA), for higher wages, 5 unions, representing 48 employees of SIRTOA, called a strike on January 17, 1977, which halted all rapid transit passenger trains on Staten Island. The strike grounded approximately 15,000 passengers who used 135 trains every day to travel on Staten Island and to other parts of the City of New York. On the same day, plaintiff started an action in this Court for a temporary injunction against the work stoppage. The defendants' members returned to work on January 18, 1977, in compliance with a temporary restraining order contained in an Order to Show Cause, signed by the Court at Special Term. On January 28, the Supreme Court, Special Term, vacated the temporary stay and denied plaintiffs' motion for a temporary injunction. While an appeal from that order was pending in the Appellate Division defendants filed a notice of removal of the case to the United States District Court for the Eastern District of New York. After a trial on

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[a] A "public employee" is "any employee holding a position by appointment or employment in the public service of a public employer." A "public employer" is "public authority, public benefit corporation." Sections 201, Subdivision 7(a) and 6(a), Civil Service Law of New York State.

February 4, 1977, District Judge Jack Weinstein declined to take jurisdiction and remanded the matter to the Appellate Division, because he found, inter alia, that:

> ". . . For all practical purposes, the Staten Island Rapid Transit Operating Authority is fully integrated with the City's rapid transit facilities, financed and controlled by the City and State . . . It may . . . be that the State Courts will interpret the State law as not applying to the employees of the Staten Island Rapid Transit Operating Authority for the purpose of limiting and controlling strikes. Certainly, the State courts are in a much better position to interpret their law that this court is . . ."

State statutes affecting interstate commerce will be upheld as valid, unless there is found to be evidence of congressional design to pre-empt the field (*Head* v. *New Mexico Board of Examiners*, 374 U.S. 424, 429-430 [1963]).

In *Florida Avocado Growers* v. *Paul*, 373 U.S. 132, 142 (1963), the Supreme Court stated:

> "The test of whether both federal and state regulations may operate, or the state regulations must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives.
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> The principle to be derived from our decisions is that federal regulations of a field of commerce should not be deemed pre-emptive of state regulatory power in the absence of persuasive reasons—either the regulated subject matter permits no other conclusions, or that Congress has unmistakably so ordained."

The exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or consistently stand together (*Kelly* v. *Washington*, 302 U S 1, 10 [1937]). There is an "old and well-known rule that statutes which in general terms direct pre-existing rights or privileges will not be applied to the sovereign without express words to that effect." (*United States* v. *United Mine Workers*, 330 U S 258, 272 [1946]).

The defendants cite *Bus Employees* v. *Wisconsin Employment Relations Board*, 340 U S 383 (1950) for the proposition that where the federal government pre-empts the field of labor relations, a state anti-strike statute is invalid. The *Bus Employees* case involved a threatened strike by employees of two privately owned utilities; a transit line and a gas company which provided services within the State. The State of Wisconsin sought to enjoin the strike pursuant to a Public Utility Anti-Strike Law. The Supreme Court invalidated the State Anti-Strike law on the ground that: (page 394)

> ". . . [w]here the state seeks to deny entirely a federally guaranteed right which Congress itself restricted only to a limited extent in case of national emergencies, however serious, it is manifest that the state legislation is in conflict with federal law."
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> "The National Labor Relations Act of 1935 and the Labor Management Relations Act of 1947, passed by Congress pursuant to its power under the Commerce Clause, are the supreme law of the land under Art. 6 of the Constitution. Having found that the Wisconsin Public Utility Anti-Strike Law conflicts with that federal legislation, the judgments enforcing the Wisconsin Act cannot stand." (page 399)

The striking workers were employees of private utility companies. They were not employed by the State or a pub-

lic benefit corporation. This point was stressed by the Court at page 391:

> "It has been made clear that federal labor legislation, encompassing as it does all industries 'affecting commerce' applies to a *privately owned public utility* whose business and activities are carried on wholly within a single state." (emphasis added)

In *Division 1287 of the Amalgamated Association of Street, Electric, Railway and Motor Coach Employees of America* v. *State of Missouri*, 374 U S 74 (1963), members of a union called a strike against a private transit company. Pursuant to a Missouri statute, the Governor declared that the public interest, health and welfare were threatened by the walk-out. He "seized" the company, and ordered that operations continue. The Supreme Court, following the rationale of the *Bus Employees* case declared that the Missouri law was invalid, in that the right to strike against a public utility engaged in interstate commerce was guaranteed by the federal scheme, and "a state law which denies that right cannot stand under the supremacy clause of the Constitution" (p. 82). In the closing paragraph of the decision, at page 83, the Court emphasized that:

> "It is hardly necessary to add that nothing we have said even remotely affects the right of a State to own or operate a public utility or any other business, nor the right or duty of the Chief executive or legislature of a State to deal with emergency conditions of public danger, violence or disaster under appropriate provisions of the State's organic or statutory law."

The defendants have also cited *Brotherhood of Locomotive Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U S 369 (1969), for the proposition that the right of public employees to strike is protected by the Railway Labor Act, which they contend supersedes a state law that proscribes

such "self help". Defendants press the argument that a strike may not be prohibited when the mediation procedures have been exhausted.

The *Brotherhood* case grew out of a labor dispute between private parties. It did not concern relationships between a state and its public employees. Moreover, the Act is silent with respect to state owned railroads and the right of public employees to strike. By judicial construction the Railway Labor Act was made applicable to the state owned railroads (*cf California* v. *Taylor*, 353 U S 553 [1957]; *Taylor* v. *Fee*, 233 F 2d 251 [7th Cir. 1956]; *New Orleans Public Belt R. Commission* v. *Ward*, 195 F 2d 829 [5th Cir. 1952]). In *California* v. *Taylor* (*supra*), the Supreme Court held that the Railway Labor Act applied to railroads owned and operated by the state which were engaged in interstate commerce. The Court struck a state law that conflicted with the Act by limiting collective bargaining rights of state employees. The Court recognized, however, that public employees of such railroads may be enjoined from striking by state law saying, (p. 566):

> "The fact that, under state law, employees of the Belt Railroad [the state owned railroad] may have no legal right to strike reduces, but does not eliminate the possibility of a work stoppage."

In *Taylor* v. *Fee* (*supra*), public employees of a state-owned railroad sought to compel the National Labor Relations Adjustment Board to take jurisdiction of their grievances. *New Orleans* v. *Ward* (*supra*) concerned the reinstatement of an employee. Several other cases have interpreted federal labor law restraints upon state-owned railroads, *viz*, *United States* v. *California*, 297 U S 175 (1936), in which the Court held that the Federal Safety Appliance Act applied to state-owned railroads engaged in interstate commerce, and *Parden* v. *Terminal Railway of the Alabama State Docks Department*, 377 U S 184 [1964], where the

Court declared that the operation of a railroad engaged in interstate commerce by a state constitutes a waiver of its sovereign immunity and a consent to be sued in a federal court for personal injuries, under the Federal Employees Liability Act. None of these cases dealt with the issue whether public employees covered by the Railway Labor Act have the right to strike in violation of state laws. In *Staten Island Rapid Transit Operating Authority* v. *Local Union 808,* (75 Labor Cases ¶ 10,343, page 17, 169 [1974], not officially reported), Judge Dooling of the Eastern District, New York, held that parties in a major dispute are free under the Railway Labor Act to resort to "self-help" where efforts at mediation have failed and when services of the National Mediation Board are terminated; that no order to temporaily restrain a union from use of the strike weapon may be granted under the Railway Labor Act. Judge Dooling deliberately declined to pass on the power of a state to legislate against strikes by its public employees and said:

> "Whether such sanctions include the right of the plaintiff's [the same Authority as in the instant case] employees to strike is not for a federal court to say . . ."

In none of the aforementioned cases was the sovereign power of the state to prevent its own financial collapse at stake.

Congress may not wield the commerce clause in a manner to impair a state's ability to function effectively within the federal system (*National League of Cities* v. *Usery,* 49 L. Ed. 2d 245, 257 [1976]. *The National League of Cities* case litigated a 1974 amendment to the Fair Labor Standards Act, whereby Congress imposed the same minimum wage and maximum hour requirements which applied to private industry to almost all state public employees. The Supreme Court reversed a judgment of the District Court which had dismissed the complaint, and said (p. 253):

> "It is one thing to recognize the authority of Congress to enact laws regulating individual business necessarily subject to dual sovereignity of the government of the Nation and of the State in which they reside. It is quite another to uphold a similar exercise of Congressional authority directed not to private citizens, *but to the States as States.* We have repeatedly recognized that there are attributes of sovereignity attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner." (Emphasis added)
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> ". . . States as States stand on a quite different footing than the individual or a corporation when challenging the exercise of Congress' power to regulate commerce." (p. 259)

The Court pointed out at page 256:

> "This Congressionally imposed displacement of state decisions may substantially reconstructure traditional ways in which local governments have arranged their affairs . . . in some employment areas, such as police and fire protection, in a manner substantially different from practices which have long been commonly accepted among local governments of this Nation."
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> "Congress may not exercise that power [to regulate commerce] so as to force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made." (p. 259)

The Supreme Court has thus reaffirmed the untrammeled right of States to protect their sovereignity and economic

integrity to make fundamental employment decisions in regard to the performance of vital public services. (page 257). The Court moved "to arrest the [attempted] denigration of the States to a role comparable to the departments of France, [which are] governed entirely out of the Nation's capital." (*Elrod* v. *Burns,* 49 L Ed 2d 567 [1976, Burger, C. J.].

The Legislature has announced and the New York Court of Appeals has upheld the public policy purpose of the Taylor Law:

> ". . . to promote harmonious and cooperative relationships between government and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations of government. These policies are best effectuated by . . . (e) continuing the prohibition against strikes by public employees and providing remedies for violations of such prohibition."

(*cf City of New York* v. *De Lury,* 69 LRRM 2865 app dismissed 394 U S 455 23 N Y 2d 175 [1968]; Matter of *Di Maggio* v. *Brown,* 65 LRRM 2518 19 N Y 2d 283 [1967]).

The public policy of New York State was likewise expressed in the legislation creating the Emergency Financial Control Act, i.e., to prevent the economic collapse of the City of New York. If New York City were to be compelled to pay wage increases to defendants in excess of the freeze levels, under the threat of strike action, the declared public policy of New York State would be frustrated. The economic consequences of a public employee strike, prompted to Court to say (at p. 183):

> "Quite obviously, the ability of the Legislature to establish priorities among government services would be destroyed if public employees could, with impunity, engage in strikes which deprive the public of essential services. The striking employees, by paralyzing a city

> through the exercise of naked power, could obtain gains wholly disapproportionate to the services rendered by them at the expense of the public and other public employees. The consequence would be the destruction of democratic legislative processes because budgeting and the establishment of priorities would no longer result from the free choice of the electorate's representatives but from the coercive effect of paralyzing strikes of public employees."

The Court emphasized that a state must safeguard its economic solvency:

> "Again, the orderly functioning of our democratic form of representative government and the preservation of the right of our representatives to make budgetary allocations—free from the compulsions of crippling strikes—require the regulation of strikes by public employees whereas there are no similar countervailing reason for a prohibition of strikes in the private sector." (p. 186)

The Taylor Law applies to this dispute. The "Self-interest of individual[s] or organization[s] may not be permitted to endanger the safety, health or public welfare of [New York] State or [one] of its subdivisions." (De Lury, page 188).

The plaintiffs shall have judgment enjoining the defendants, their members, officers, representatives, and all other persons acting on their behalf or in concert with them, from engaging in causing, instigating, encouraging or lending support or assistance to any strike, work stoppage, or slowdown in the operating of the Staten Island Rapid Transit Operating Authority railroad.

The defendants' union officials shall forthwith instruct all members of their involved unions not to engage or partici-

pate in any strike, work slowdown, or stoppage against the plaintiff's railroad operations.

This decision constitutes the final judgment of the Court.

/s/ THOMAS RUSSELL JONES
J S C

APPENDIX D

STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY, *Appellant*,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 922, et al., *Respondents*.

Supreme Court, Appellate Division, Second Department. Feb. 8, 1977. Louis J. Lefkowitz, Atty. Gen., New York City (Harold Tompkins, New York City, James P. McMahon and Alphonse E. D'Ambrose, Brooklyn, of counsel), for appellant. Reilly, Fleming & Reilly, New York City (Michael S. Wolly, Edward J. Hickey, Jr., William J. Hickey, Washington, D.C., Paul G. Reilly, Jr., New York City, and Mulholland, Hickey & Lyman, Washington, D.C., of counsel), for respondents. Appeal by the Staten Island Rapid Transit Operating Authority, a subsidiary of the Metropolitan Transportation Authority, from an order of the Supreme Court, Kings County, dated January 28, 1977, which vacated a temporary restraining order contained in an order to show cause granted on January 17, 1977 and denied its motion for a preliminary injunction. Order reversed, in the exercise of discretion, without costs or disbursements, the stay contained in the order to show cause made by this court is continued, and the action is remanded to the Supreme Court for an immediate trial of the issues, which trial shall commence on Thursday, February 10, 1977; this action is ordered placed at the head of the trial calendar for said date. An expeditious determination should be made by the trial court. Upon the argument of this appeal, the parties agreed, by their attorneys, to this disposition of the appeal.

SAMUEL RABIN, Acting P. J., and SHAPIRO, TITONE and O'CONNOR, JJ., *concur*.

APPENDIX E

Findings of Fact and Law of the Hon. Jack B. Weinstein, United States District Judge for the Eastern District of New York February 4, 1977

THE COURT: The following constitutes the Court's findings of fact and law in addition to the matters which the Court has already taken judicial notice of.

The Staten Island Rapid Operating Authority has a certificate from the Interstate Commerce Commission. The parties to this dispute have treated their relationship as being controlled, at least in part, by the Railway Labor Act. Nevertheless, the connection of the Staten Island Rapid Transit Operating Authority to Interstate Commerce Commission is tenuous. This is recognized by the Interstate Commerce Commission.

For example, in its certificate order dated April 21, 1971, in that order it exempts the Authority from reporting an accounting provision and from other provisions. For all practical purposes, the Staten Island Rapid Transit Operating Authority is fully integrated with the City's rapid transit facilities, financed and controlled by the City and State and a variety of authorities set up and authorized by the State.

Were the matter to come before the Court as an action commenced in this court by the Staten Island Transit Operating Authority to obtain an injunction under the Railway Labor Act, this Court would follow the decision of Judge Dooling of July 8, 1974, and it would deny an order restraining the use of the strike procedures by the defendant, the International Brotherhood of Electrical Workers, Local 922; however, this matter does not come before this Court, and it becomes hearby reason for removal not being commenced in this Court.

In view of the fact that there is a complex of final arrangements and public employees statutes which require

interpretation and which involve complex administrative operations of the City and State, the Federal Court should abstain from deciding these State and local issues if it is at all possible to do so.

It may well be that the State Courts will interpret the State law as not applying to employees of the Staten Island Rapid Transit Operating Authority for purposes of limiting and controlling strikes. Certainly, the State courts are in much better position to interpret their law than this Court is.

Should it be necessary to interpret the Federal law on the matter, the Court system of the State has before it the opinion of Judge Dooling. Accordingly, this Court vacates the temporary restraining order of February 3, 1977, preventing the Staten Island Rapid Transit Operating Authority employees from striking and remands the case to the State Court.

The Court interprets for the purpose of this litigation pending the entry of the order of remand and the assumption again by the State Courts of jurisdiction of the State temporary restraining order as one that remains in effect. There has been no intention by this Court to vacate the temporary restaining order of the Appellate Division, Second Department. What effect that order has, if it has an effect, it is for that Court and not this Court to decide. This Court assumes that immediate application will be made to the Appellate Division or to another State authority to clarify this matter so there will be no confusion about whether there is a temporary restraining order in effect; but the Federal Court as of the entry of the order has no jurisdiction at all.

These findings and decision is that, as I understand the matter, the defendant will be and are stayed from striking pending a decision by the Appellate Division, Second Department; but as I say, that is for the State to decide and it's not for this Court to decide.

Any other findings of fact or law that the parties would like?

Mr. Reilly: I have a question.

I don't recall that you actually entered the TRO yesterday because we agreed.

The Court: That is correct. You were going to submit one but you never did. On my oral order restraining is vacated.

Do you have an order of remand?

Mr. McMahon: We haven't prepared one yet.

The Court: Would you like me to write it on the bottom of this paper?

Mr. McMahon: I would appreciate that.

The Court: Are these the papers that you are going to file because I will write it on the bottom of your original.

Mr. McMahon: Thank you.

The Court: Motion to remand granted pursuant to oral opinion and order. That will suffice, shouldn't it?

Mr. McMahon: It certainly will, your Honor. Thank you.

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APPENDIX F

Memorandum

SUPREME COURT: KING'S COUNTY

(Special Term, Part I)

Dated January 27, 1977

Staten Island Rapid Transit Operating Authority

vs.

International Brotherhood of Electrical Workers, Local 922, et al.

The plaintiff, Staten Island Rapid Transit Operating Authority (SIRT) seeks a preliminary injunction restraining the defendant labor unions from conducting a strike against plaintiff.

SIRT is a public benefit corporation established pursuant to section 1266(5) of the Public Authorities Law and is a subsidiary of the Metropolitan Transportation Authority charged with the operation of a railroad facility in the Borough of Richmond, New York City.

Plaintiff, in seeking the instant injunctive relief, asserts that it is a public employer as defined under the New York State "Taylor Law" (Public Employees' Fair Employment Act, Civil Service Law, section 200 et seq.), and that accordingly, any strike by its employees is prohibited (Civil Service Law, section 210).

The defendants counter these arguments with the assertion that plaintiff's employees are covered by the Railway Labor Act (45 USC, section 151 et seq.), and that the right to strike granted by that law takes precedence over any state laws to the contrary.

While it is clear that plaintiff fits the definition of "public employer" set forth in Civil Service Law, section 201(6)(a) and that its employees would therefore be subject to the Taylor Law (Civil Service Law, section 201[7][a]), it is important to understand the background of the employment relationship here involved in order to more clearly determine this controversy.

The railroad operated by plaintiff is a single line commuter railway operating between Tottenville and the St. George Ferry Terminal in Staten Island. Prior to the acquisition of this railroad by the City of New York and its subsequent turnover to plaintiff in 1970, the railroad was owned and operated by a private company which was part of the B&O Railroad system.

The employees of this railroad had historically been dealt with by management pursuant to the Railway Labor Act. Even after takeover by plaintiff, and to this day, any negotiations or labor agreements have been handled under the terms of the federal statute. Indeed, the instant dispute, which now threatens to precipitate a strike, was negotiated under the auspices of the National Mediation Board provided for in the Railway Labor Act.

The Railway Labor Act has been interpreted by the U. S. Supreme Court to permit strikes by covered employees upon exhaustion of the procedures provided for settlement of disputes (*Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369). The court further held that "State courts may not enjoin a peaceful strike by covered employees, no matter how economically harmful the consequences may be." (394 U.S. at 385.)

In *State of California* v. *Taylor* (353 U.S. 553) it was decided that State public policy concerning Civil Service employees was ineffective by reason of conflicting provisions of the Railway Labor Act where the employees were covered by both laws.

Similarly, North Carolina statutes concerning public employees were held to be superseded by provisions of the Railway Labor Act where the National Mediation Board had properly determined that it had jurisdiction over the State employees (*International Longshoremen's Assoc.* v. *N. Carolina State Ports Authority*, 370 F. Supp. 33 affd 511 F. 2d 1007).

In the instant dispute, the National Mediation Board has taken action, albeit to no avail, and it can be concluded that it has thus determined that SIRT's employees are subject to the Railway Labor Act. SIRT does not dispute the fact that the Board has taken such a position, but attempts to show that its jurisdiction under the law is improper.

However, this court is without power to review the determination of the National Mediation Boad. Determinations of that Board as to its jurisdiction are subject to judicial review pursuant to the Administrative Procedures Act (5 USC, section 702) in a proceeding instituted in a United States District Court (*International Longshoremen's Assoc.* v. *N. Carolina State Ports Authority*, 463 F. 2d 1).

Until such time as the determination of the National Mediation Board as to its jurisdiction over SIRT's employees is reversed by the Board or an appropriate federal court, this court is bound to find that the right to strike guaranteed by the Railway Labor Act supersedes the provisions of the Taylor Law as to these employees.

Accordingly, the motion for a temporary injunction is denied.

Submit order.

/s/ J. Brownstein
J. S. C.

APPENDIX G

The Constitution of the United States of America

ARTICLE I, SECTION 8.

The Congress shall have power • • • • •

(3). To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; • • • • •

—And

(18). To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

ARTICLE VI, SECTION 2.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

The Railway Labor Act, 44 Stat. 577, as amended. 45 U.S.C. § 151, *et seq.*

TITLE I, SECTION 1.

When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service

(other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, inter-urban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to carrier where delivery is not beyond the tipple, and the operation of equipment or facilities therefor, or any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory, and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its con-

tinuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Comission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

TITLE I, SECTION 2.

GENERAL PURPOSES

SECTION 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom

of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to pre-

vent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth.[3] Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, of other contributions: *Provided,* That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

* * * * *

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of the Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and

places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records

of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

• • • • •

TITLE I, SECTION 5.

First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in Section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 10 of this Act, no change

shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

• • • • •

TITLE I, SECTION 6.

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

The Civil Service Law of the State of New York

Ch. 392, L. 1967, as amended

SECTION 200, STATEMENT OF POLICY.

The legislature of the state of New York declares that it is the public policy of the state and the purpose of this act to promote harmonious and cooperative relationships between government and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government. These policies are best effectuated by (a) granting to public employees the right of organization and representation, (b)

requiring the state, local governments and other political subdivisions to negotiate with, and enter into written agreements with employee organizations representing public employees which have been certified or recognized, (c) encouraging such public employers and such employee organizations to agree upon procedures for resolving disputes, (d) creating a public employment relations board to assist in resolving disputes between public employees and public employers, and (e) continuing the prohibition against strikes by public employees and providing remedies for violations of such prohibition.

SECTION 201. DEFINITIONS.

As used in this article—• • • • •

3. The term "chief legal officer" means (a) in the case of the state of New York or a state public authority, the attorney general of the state of New York, (b) in the case of a county, city, town, village, or school district, the county attorney, corporation counsel, town attorney, village attorney or school district attorney, as the case may be, and (c) in the case of any such government not having its own attorney, or any other government or public employer, the corporation counsel of the city in which such government or public employer has its principal office, and if such principal office is not located in a city, the county attorney of the county in which such government or public employer has its principal office.

• • • • •

6(a). The term "government" or "public employer" means (i) the state of New York, (ii) a county, city, town village or any other political subdivision or civil division of the state, (iii) a school district or any governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission, or public benefit corporation, or (vi) any other public corporation, agency or instrumentality or

unit of government which exercises governmental powers under the laws of the state.

• • • • •

7. (a) The term "public employee" means any person holding a position by appointment or employment in the service of a public employer, except that such term shall not include for the purposes of any provision of this article other than Secs. 210 and 211 of this article, persons holding positions by appointment or employment in the organized militia of the state and persons who may reasonably be designated from time to time as managerial or confidential upon application of the public employer to the appropriate board in accordance with procedures established pursuant to Sec. 205 or 212 of this article, which procedures shall provide that any such designations made during a period of unchallenged representation pursuant to subdivision two of Sec. 208 of this chapter shall only become effective upon the termination of such period of unchallenged representation. Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

• • • • •

8. The term "state public authority" means a public benefit corporation or public corporation, a majority of the members of which are (i) appointed by the governor or by another state officer or body, (ii) designated as members by virtue of their state office, or (iii) appointed or designated by any combination of the foregoing.

9. The term "strike" means any strike or other concerted stoppage of work or slowdown by public employees.

SECTION 210. PROHIBITION OF STRIKES.

1. No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall cause, instigate, encourage, or condone a strike.

• • • • •

SECTION 211. APPLICATION FOR INJUNCTIVE RELIEF.

Notwithstanding the provisions of section eight hundred seven of the labor law, where it appears that public employees or an employee organization threaten or are about to do, or are doing, an act in violation of section two hundred ten of this article, the chief executive officer of the government involved shall (a) forthwith notify the chief legal officer of the government involved, and (b) provide such chief legal officer with such facilities, assistance and data as will enable the chief legal officer to carry out his duties under this section, and, notwithstanding the failure or refusal of the chief executive officer to act as aforesaid, the chief legal officer of the government involved shall forthwith apply to the supreme court for an injunction against such violation. If an order of the court enjoining or restraining such violation does not receive compliance, such chief legal officer shall forthwith apply to the supreme court to punish such violation under Sec. 750 of the judiciary law.

• • • • •

The Public Authorities Law of the State of New York

SECTION 1266.

In order to effectuate the purposes of this title:

• • • • •

5. The authority may acquire, hold, own, lease, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any of its facilities through, and cause any one or more of its powers, duties, functions or activities to be exercised or performed by, one or more wholly owned subsidiary corporations of the authority and may transfer to or from any such corporation any monies, real property or other property for any of the purposes of this title. The directors or members of each such subsidiary corporation shall be the same persons holding the office or members of the authority. Each such subsidiary corporation and any of its property, functions, and activities shall have all of the privileges, immunities, tax exemptions and other exemptions of the authority and of the authority's property, functions and activities. Each such subsidiary corporation shall be subject to the restrictions and limitations to which the authority may be subject. Each such subsidiary corporation shall be subject to suit in accordance with section twelve hundred seventy-six of this title. The employees of any such subsidiary corporation except those who are also employees of the authority shall not be deemed employees of the authority.

If the authority shall determine that one or more of its subsidiary corporations should be in the form of a public benefit corporation by executing and filing with the Secretary of State a certificate of incorporation, which may be amended from time to time by filing, which shall set forth the name of such public benefit subsidiary corporation, its duration, the location of its principal office, and any or all of the purposes of acquiring, owning, leasing, establishing,

constructing, effectuating, operating, maintaining, renovating, improving, extending or repairing one or more facilities of the authority. Each such public benefit subsidiary corporation shall be a body politic and corporate and shall have all those powers vested in the authority by the provisions of this title which the authority shall determine to include in its certificate of incorporation except the power to contract indebtedness.

Whenever any state, political subdivision, municipality, commission, agency, officer, department, board, division or person is authorized and empowered for any of the purposes of this title to co-operate and enter into agreements with the authority such state, political subdivision, municipality, commission, agency, officer, department, board, division or person shall have the same authorization and power for any of such purposes to co-operate and enter into agreements with a subsidiary corporation of the authority.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-401

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 922, *et al.*,

Petitioners,

—v.—

STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

The petitioners seek a writ of certiorari to review a judgment of the Appellate Division of the Supreme Court of the State of New York, Second Department, entered April 25, 1977, which unanimously affirmed a judgment of the State Supreme Court, Kings County, dated Feb. 28, 1977 which, after a non-jury trial, enjoined public employees from engaging in a strike against respondent's transit facilities. The Court of Appeals of the State of New York on June 16, 1977 denied petitioners leave to appeal to that Court (42 NY2d 804).

Opinions Below

The opinion of the Appellate Division of the Supreme Court of the State of New York, Second Department, is reported at 57 AD 2d 614, 393 NYS 2d 773 (1977).

The opinion of the Supreme Court of the State of New York, Kings County, dated February 28, 1977, not yet officially reported, is set forth as Appendix C to the petition.

The opinion of the Appellate Division of the Supreme Court of the State of New York, Second Department dated February 8, 1977, directing a trial, is reported at 56 AD 2d 585, 390 NYS 2d 1021 (1977).

The opinion of the United States District Court for the Eastern District of New York, and the opinion of the Supreme Court, Kings County, dated January 27, 1977 are unreported but appear as Appendices E and F annexed to the petition.

Question Presented

When the procedures of the Railway Labor Act (45 U.S.C. §151 et seq.) have been exhausted, can a strike by public employees be enjoined under State law where the employees operate a publicly owned commuter rail line whose connection with interstate commerce is tenuous?

We argue that the State courts were correct in granting the injunction since the Railway Labor Act does not give public employees the right to strike and could not constitutionally do so under the facts of this case.

Statement of the Case

The respondent, Staten Island Rapid Transit Operating Authority ("SIRTOA"), is a public benefit corporation established pursuant to §1266, subd. 5 of the New York

Public Authorities Law and is a subsidiary of the Metropolitan Transportation Authority of the State of New York.

SIRTOA operates the only rail passenger service in the Borough of Staten Island on a line about 14 miles long. It has approximately 250 employees represented by 13 unions and carries approximately 15,000 passengers each weekday.

SIRTOA carries no freight, connects with no interstate passenger carrier and crosses no state lines.

The line is owned by the City of New York, which acquired it from the Staten Island Rapid Transit Railway Company, a subsidiary of the Baltimore and Ohio Railroad (B&O). By agreement of lease and operating agreement made as of the 20th day of July, 1970 the City turned this line over to SIRTOA for operation. The B&O retained trackage rights under which it now operates one freight train per day, with B&O personnel and equipment, serving one regular customer. The freight operation was unaffected by a four month strike of SIRTOA employees in 1975.

The City of New York provides subsidies to pay SIRTOA's capital expenses and operating deficits. Because of this financial relationship, SIRTOA is a "covered organization" as that term is defined in the New York State Financial Emergency Act for the City of New York and is subject to the wage freeze and financial limits set forth in that act (Chapter 868 of the New York Laws of 1975). As a subsidiary of the Metropolitan Transportation Authority it is regarded under state law as performing an "essential governmental function" in carrying out its purposes (Public Authorities Law §1264, subdivision 2).

Since the predecessor operator of this railway line was part of the B&O Railroad system, the employees of

SIRTOA historically negotiated under provisions of the Railway Labor Act. This Act is still applicable to them. In fact, negotiations under the Act were carried on for over two years.

On December 15, 1976 the National Mediation Board gave notice that its services had terminated under the provisions of the Railway Labor Act; thus all the procedures provided for under the Railway Labor Act were exhausted.

On Monday, January 17, 1977 at 6 a.m., 48 SIRTOA employees commenced a strike. These employees are members of five unions which comprise petitioners' System Federation No. 1. Since SIRTOA is a public employer as that term is defined in the New York State Civil Service Law, §201, subd. 6, notice of the strike was given to the New York Attorney General, who forthwith applied for injunctive relief (see New York Civil Service Law, §200 et seq., known as the Taylor Law).

On January 17, 1977, Judge Irwin Brownstein in Kings County Supreme Court issued a temporary restraining order and the employees returned to work late in the afternoon of that day. Subsequently, Judge Brownstein vacated the temporary restraining order and refused to issue a temporary injunction. The New York State Appellate Division, Second Department, by order dated February 8, 1977, unanimously reversed Judge Brownstein's order and directed an immediate trial.

The petitioners' attorneys removed this action to the United States District Court, Eastern District of New York. A trial was held on February 4, 1977 before District Judge Jack B. Weinstein. Judge Weinstein in his findings

of fact and law said that the connection of SIRTOA to interstate commerce was "tenuous" and that federal courts should abstain from deciding state and local issues. Accordingly he remanded the case to the state court.

Pursuant to an order of the Appellate Division, Second Department, a trial was held before Judge Thomas R. Jones on February 15th and 16th. On February 28th he issued a memorandum decision and judgment enjoining the petitioners from striking.

Petitioners appealed to the Appellate Division, which unanimously affirmed the judgment of the trial court. The Court based its determination primarily on the following findings of fact: SIRTOA is "essentially an intrastate passenger or commuter operation, fully akin to the City's rapid transit system . . ."; it is "not a vital link in the national transportation system, the continued operation of which is important to the national flow of commerce . . ."; the "connection between SIRTOA and interstate commerce is extremely tenuous . . ." The Court also found that this dispute "does not present problems of national or even regional magnitude, which problems would require uniform treatment on a national scale." (57 AD 2d 614).

Petitioners sought leave to appeal to the New York State Court of Appeals. That Court, by order dated June 16, 1977, denied leave (see Appendix A annexed to petition).

ARGUMENT

No substantial federal question is presented.

The New York Appellate Division based its decision (57 AD 2d 614) on findings of fact with respect to a unique local situation involving local government employees. The Court said (p. 616):

> "• • • balancing SIRTOA's minimal and tenuous connection to interstate commerce exemplified by one freight run per day for the convenience of one customer, against the State's direct and compelling interest in preventing strikes by public employees and ensuring the continuation of commuter rail service for thousands of Staten Island residents, it is clear that these public employees may properly be enjoined, under the Taylor Law, from striking against SIRTOA as a means of 'self help' in their continuing dispute."

The determination by the State courts should not be reviewed by this Court.

There is no interference with the applicability of federal statutes to these employees; the facts show that all the procedures of the Railway Labor Act had been exhausted before provisions of state law were invoked.

This Court in *Machinists* v. *Wisconsin Emp. Relations Commission*, 427 U.S. 132 (1976), said (p. 136):

> "Federal labor policy as reflected in the National Labor Relations Act, as amended, has been construed not to preclude the States from regulating aspects of labor

> relations that involve 'conduct touch[ing] interests so deeply rooted in local feeling and responsibility that . . . we could not infer that Congress had deprived the States of the power to act' *San Diego Unions* v. *Garmon*, 359 U.S. 236, 244 (1959)."

Clearly, the right of local government employees to carry on a strike against a public agency so as to deprive thousands of commuters of their only means of local rail transportation is a matter deeply rooted in local feeling and responsibility. Prohibitions against such strikes are found in the common law of this State. Nothing contained in the Railway Labor Act gives public employees of a local agency the right to strike. See *National League of Cities* v. *Usery*, 426 U.S. 833 (1976) as to the limited power of Congress to act in a fashion that impairs the States' ability to function effectively in a federal system.

The cases relied upon by petitioners, particularly *Brotherhood of Railway Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969) and *California* v. *Taylor*, 353 U.S. 553 (1957), which involved State-owned railroads engaged in interstate commerce are not in point as they (1) do not concern strikes by local government employees, and (2) involve controversies having a substantial impact on interstate commerce.

The judgment sought to be reviewed affects only a tiny intrastate passenger line with about 250 employees. The judgment is based on a complex factual situation unlikely to be duplicated elsewhere.

There is no federal question involved here that warrants review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: October 7, 1977

Respectfully submitted,

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